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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

PINE VALLEY, INC., Plaintiff and Appellant, v. AJINOMOTO NORTH AMERICA, INC. et al., Defendants, Respondents and Cross- Appellants.	B282443 Los Angeles County Super. Ct. No. BC551112

APPEAL from a judgment of the Superior Court of Los Angeles County, Samantha Jessner, Judge. Affirmed.

Klapach & Klapach, Joseph S. Klapach; LA Superlawyers, William W. Bloch; and Salomons Law Group, Gary Keith Salomons for Plaintiff and Appellant Pine Valley, Inc.

Sheppard, Mullin, Richer & Hampton LLP, Gregory P. Barbee, and Joseph D. Barton for Defendants, Respondents and Cross-Appellants Ajinomoto North America, Inc. and Ajinomoto Frozen Foods U.S.A., Inc.

INTRODUCTION

Pine Valley, Inc. (Pine Valley) developed recipes for several frozen fried rice products that it sold exclusively to Trader Joe's Co. (Trader Joe's) under the Trader Joe's label. It contracted with two subsidiaries of Ajinomoto Co., Inc. to produce these products: Ajinomoto North America, Inc. (Ajinomoto N.A.) and Ajinomoto Frozen Foods, U.S.A, Inc. (Ajinomoto U.S.A).[1] After approximately 15 years, however, Trader Joe's replaced Pine Valley's fried rice products with Ajinomoto's competing products.

Alleging they improperly used Pine Valley's proprietary recipes for the competing products, Pine Valley sued the two Ajinomoto subsidiaries. A jury found in favor of Pine Valley and awarded compensatory damages totaling $2.8 million. The trial court also awarded Pine Valley a reasonable royalty on Ajinomoto's future sales of fried rice products derived from Pine Valley's recipes. The trial court denied Pine Valley's request for statutory exemplary damages, however, and also granted Ajinomoto's motion for a directed verdict on punitive damages.

Pine Valley appeals the trial court's judgment to the extent it denies statutory exemplary damages and punitive damages. Ajinomoto cross-appeals, contending: (1) substantial evidence does not support the verdict; (2) the court erred in awarding Pine Valley a reasonable royalty; and (3) the court improperly dismissed Ajinomoto N.A.'s breach of contract cross-complaint with prejudice.

We affirm the judgment.

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[1] We refer to the two subsidiaries collectively as Ajinomoto or the Ajinomoto subsidiaries.

FACTUAL BACKGROUND

Between 2001 and 2013, Pine Valley sold more than $50 million worth of its frozen fried rice products to Trader Joe's. Pine Valley had created the recipes for its products, but did not have facilities to produce food products in mass quantities. So, Pine Valley hired a co-packer, Granpac, to produce the products, for sale to Trader Joe's. Pine Valley necessarily disclosed its recipes to Granpac so it could make the products. Granpac orally agreed Pine Valley would have the exclusive right to sell the fried rice products to Trader Joe's.

In 2002, Ajinomoto purchased Granpac. John Tolman, who had worked for Granpac as the Pine Valley account representative, began working for Ajinomoto after the acquisition. Tolman confirmed to Pine Valley that the business relationship would continue as it had under Granpac's ownership, i.e., that Pine Valley had an exclusive with Trader Joe's for its fried rice products and no other products were to be sold to Trader Joe's directly without Pine Valley's knowledge and approval.

A few years after the acquisition, Tolman left Ajinomoto and Pine Valley's relationship with Ajinomoto deteriorated. Pine Valley learned Ajinomoto had taken steps to try to sell competing frozen food products to Trader Joe's. Pine Valley considered changing to a different co-packer, but ultimately stayed with Ajinomoto because Pine Valley did not want to jeopardize the success of its products.

Given its growing concerns, in 2011, Pine Valley had Ajinomoto U.S.A execute a confidentiality and non-disclosure agreement, which prohibited Ajinomoto U.S.A from disclosing confidential information including "recipes" and "business affairs (e.g., financial, marketing, product information)."

In September 2012, using Pine Valley's recipes without permission, Ajinomoto prepared samples of competing chicken and vegetable fried rice products, hoping to sell them to Trader Joe's. Over the next few months, Ajinomoto sent Trader Joe's several samples of revised chicken fried rice and vegetable fried rice (also based on Pine Valley's recipes). In March 2013, Trader Joe's informed Pine Valley it was discontinuing Pine Valley's frozen fried rice line because Trader Joe's had found another vendor. Pine Valley later learned the other vendor was Ajinomoto.

Ajinomoto also started selling fried rice derived from Pine Valley's recipes to other retailers, including Smart & Final, Sam's Club, Costco, Hy-Vee, and Shop Rite.

PROCEDURAL HISTORY

By the time of trial, Pine Valley's claims against Ajinomoto consisted of breach of contract, intentional interference with prospective economic advantage, fraud, violation of the California Uniform Trade Secrets Act ("CUTSA"), and misappropriation of confidential information.[2] Pine Valley sought compensatory damages, statutory exemplary damages under CUTSA, punitive damages, injunctive relief, and attorneys' fees and costs.

Ajinomoto brought two motions for directed verdict. The court granted the first motion on punitive damages, based on

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2 Additional causes of action were dismissed before trial.

Pine Valley's failure to present evidence of Ajinomoto's financial condition. The court denied the second motion, rejecting Ajinomoto's contention that CUTSA displaced Pine Valley's common law tort claims.

The jury found in favor of Pine Valley on all five of its claims[3] and awarded compensatory damages in the amount of $1.4 million against each subsidiary for a total of $2.8 million.

On the same day, the court began a bench trial on Ajinomoto N.A.'s cross-complaint, which alleged Pine Valley had not paid for $400,000 of frozen fried rice products it had produced for Pine Valley. After calling its first witness, Ajinomoto N.A. asked the court to dismiss the cross-complaint without prejudice. Pine Valley objected, arguing the cross-complaint should be dismissed with prejudice. The court noted the objection but deferred ruling on whether the dismissal would be with or without prejudice.

The court later conducted a hearing on Pine Valley's requests for statutory exemplary damages pursuant to CUTSA and a permanent injunction. As discussed more fully below, the court denied both. In lieu of the permanent injunction, the court conditioned Ajinomoto's future use of Pine Valley's recipes upon payment of a reasonable royalty.

Ultimately, the court entered final judgment in favor of Pine Valley on its five causes of action, and dismissed the cross-complaint with prejudice pursuant to Code of Civil Procedure section 581, subdivision (e).

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3 The jury found for Pine Valley against both subsidiaries on all claims except the breach of contract cause of action, which named only Ajinomoto U.S.A.

DISCUSSION

I. PINE VALLEY'S APPEAL

A. The Trial Court Did Not Abuse Its Discretion When It Denied Statutory Exemplary Damages

Pine Valley contends the court erred in concluding it could not award statutory exemplary damages under CUTSA. We review the trial court's denial of exemplary damages for abuse of discretion. (*Sheward v. Magit* (1951) 106 Cal.App.2d 163, 167 ["the granting or withholding of exemplary damages is wholly within the discretion of the trier of fact"].) We find no abuse of discretion.

CUTSA permits an award of actual damages "caused by misappropriation" of a trade secret. (Civ. Code, § 3426.3, subds. (a) & (b).)[4] "If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award" of actual damages caused by the misappropriation. (§ 3426.3, subd. (c).) In this case, however, because the jury returned a general verdict on all five causes of action asserted by Pine Valley, the trial court could not determine how much, if any, of the award represented damages "caused by the misappropriation."

The court reasoned Pine Valley was judicially estopped from arguing the entirety of the compensatory damages award should be attributed to its CUTSA claim because Pine Valley previously asserted its non-CUTSA claims were based on facts separate and independent from its CUTSA claim. Judicial estoppel applies when "'(1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial

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4 All further statutory references are to the Civil Code unless otherwise indicated.

administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake.'" (*Aguilar v. Lerner* (2004) 32 Cal.4th 974, 986-987.) Each element is satisfied here.

The Ajinomoto subsidiaries argued in support of their motion for directed verdict that Pine Valley should not be permitted to bring its common law tort claims because CUTSA displaces them. (*See K.C. Multimedia, Inc. v. Bank of America Technology & Operations, Inc*. (2009) 171 Cal.App.4th 939, 955-58 [explaining that CUTSA displaces common law claims based on trade secret misappropriation].) In response, Pine Valley successfully argued its common law tort claims were not displaced by CUTSA because they involved conduct having a factual basis *independent* of any misappropriation of trade secret. The trial court accepted this argument when denying the directed verdict motion.

After prevailing before the jury on its CUTSA and common law tort claims, Pine Valley took a wholly inconsistent position, urging the court to apply the exemplary damages provision of CUTSA to the entirety of the damages awarded by the jury on both the CUTSA and common law claims. The trial court correctly ruled Pine Valley was judicially estopped from making this argument. Pine Valley was precluded at trial and is precluded now from arguing it suffered only "one harm" and is entitled to exemplary damages of up to twice the amount of the compensatory damages. And because the court had no basis for determining how much of the damages award, if any, was based on CUTSA as opposed to the common law claims, it was within

its discretion not to award any statutory exemplary damages. Indeed, it could not make such an award because the statute limits exemplary damages to twice the CUTSA compensatory award. Without any indication from the jury about the amount of the compensatory CUTSA damages, if any, the court could not be certain any exemplary damages award would not run afoul of the limit.

Pine Valley further contends it was Ajinomoto's burden to object to the general verdict form. Its argument is misguided. Pine Valley—not Ajinimoto—sought statutory exemplary damages. Thus, it was Pine Valley's obligation to object to the general verdict form at trial, knowing it would later seek an award of statutory exemplary damages for its CUTSA claim. (*See Hercules Powder Co. v. Automatic Sprinkler Corp. of America* (1957) 151 Cal.App.2d 387, 401 [defect in verdict form waived by failing to object at the time the forms were submitted to the jury or when the verdict was rendered].)

B. The Trial Court Did Not Err By Granting the Directed Verdict on Punitive Damages

Pine Valley also contends the court erred by granting a directed verdict on punitive damages, arguing it presented sufficient evidence of the Ajinomoto subsidiaries' financial condition. We review the granting of a directed verdict *de novo*. (*Brassinga v. City of Mountain View* (1998) 66 Cal.App.4th 195, 210.) We discern no error.

It is well settled that evidence of a defendant's financial condition is a prerequisite to an award of punitive damages. (*Adams v. Murakami* (1991) 54 Cal.3d 105, 110.) The purpose of punitive damages is to "deter, not to destroy" and "the reviewing

court will be rendered unable to consider the effect of the award" absent financial condition evidence. (*Ibid*.) "[A] punitive damages award is excessive if it is disproportionate to the defendant's ability to pay." (*Ibid*.)

Pine Valley failed to present sufficient evidence of the Ajinomoto subsidiaries' financial condition to support an award of punitive damages. Pine Valley offered two snippets of evidence ostensibly showing their financial condition: (1) the "Consolidated Results" for fiscal years 2013 through 2015 and the March 2016 forecast for Ajinomoto Co., Inc. (the parent company); and (2) a document reflecting Ajinomoto N.A.'s acquisition of Windsor Quality Holdings in 2014 for $804 million.

The financial condition of the parent company provides no evidence of the subsidiaries' financial condition. (*Tomaselli v. Transamerica Ins. Co.* (1994) 25 Cal.App.4th 1269, 1285-1286.) Further, the amount a defendant company paid to acquire another company is insufficient to determine the amount necessary to discourage future wrongful conduct or the defendant company's current financial condition. (*See Baxter v. Peterson*, 150 Cal.App.4th 673, 680 ["there should be some evidence of the defendant's actual wealth. Normally evidence of liabilities should accompany evidence of assets, and evidence of expenses should accompany evidence of income".]) Pine Valley's reliance on *Zaxis Wireless Communications v. Motor Sound Corp*. (2001) 89 Cal.App.4th 577 (*Zaxis*) is misplaced. The court in *Zaxis* held plaintiff's evidence of financial condition was not insufficient as a matter of law to show a corporate defendant had the ability to pay a $300,000 punitive damages award. (*Id*. at p. 580-581.) Although the evidence revealed defendant had a negative net worth, plaintiff also presented financial statements showing $257

million in revenues versus $258 million in expenses, a credit line of $50 million, and financial documents revealing the net worth calculation did not mean the company did not have sufficient cash flow to pay this punitive damages award. (*Ibid.*) *Zaxis* stands for the proposition that a negative net worth does not necessarily bar punitive damages and it underscores the need for sufficient evidence to evaluate a defendant's financial condition, especially including the ability to pay a punitive damages award. The evidence put forward by Pine Valley falls far short of what is required.

For the first time on appeal, Pine Valley asserts the subsidiaries' financial condition can be established solely by evidence of their "illicit profits" from sales to other retailers. Pine Valley forfeited this argument by failing to raise it in the trial court. (*People v. Valdez* (2012) 55 Cal.4th 82, 118.)

In any event, we are unpersuaded. The only case Pine Valley cites for this proposition is *Cummings Medical Corp. v. Occupational Medical Corp*. (1992) 10 Cal.App.4th 1291. Pine Valley ignores contrary authority that evidence of a defendant's net worth is required (*e.g.*, *Dumas v. Stocker* (1989) 213 Cal.App.3d 1262, 1267-1269) and that evidence of income without evidence of assets and liabilities or "something more" than income alone is insufficient (*Lara v. Cadag* (1993) 13 Cal.App.4th 1061, 1064-1065, fn. 3). Without such evidence, the court cannot determine a defendant's ability to pay, as required by our Supreme Court. (*Adams v. Murakmi* (1991) 54 Cal.3d 105, 112.)

Moreover, here – unlike in *Cummings* – Pine Valley did not prove illicit profits. Indeed, Pine Valley concedes its expert did not include "illicit profits" from sales to other retailers in his damages analysis because Ajinomoto refused to disclose

documents regarding such sales. On this record, it is impossible to determine the Ajinomoto subsidiaries' ability to pay punitive damages. Therefore, a directed verdict denying punitive damages was proper.

C. Punitive Damages Discovery

Alternatively, Pine Valley seeks to excuse its failure to introduce the required evidence of the Ajinomoto subsidiaries' financial condition, arguing the court erred in declining to compel the defendants to produce evidence of their financial condition at trial. The court properly exercised its discretion.

Approximately six months before trial, Pine Valley served a notice to attend the trial and a request for production of documents on the Ajinomoto subsidiaries (which are non-California residents) pursuant to Code of Civil Procedure section 1987, subdivision (b). In the notice, Pine Valley sought the appearances at trial of two non-resident employees and the production of 46 categories of documents, consisting of records of sales of fried rice to retailers other than Trader Joe's. The Ajinomoto subsidiaries did not respond to the notice, asserting it was void. Significantly, Pine Valley did not promptly seek to enforce the notice. Instead, just before the close of evidence, it sought to call Ajinomoto's general counsel as a witness. He was not named in the notice, was not on any witness list, had never been mentioned as a potential witness, and had been in the courtroom for the entirety of the trial. Further, and for the first time, Pine Valley sought the production of two documents not identified in the notice: a balance sheet and a statement of income. It is unclear from the record whether Pine Valley sought these documents for both defendants.

The trial court properly declined to enforce the notice at trial. The notice was void on its face because it purported to compel a person who is an out-of-state resident to come to California. "A witness, including a witness specified in subdivision (b) of Section 1987, is not obliged to attend as a witness before any court . . . unless the witness is a resident within the state at the time of service." (Code Civ. Proc., § 1989; *Amoco Chemical Co. v. Certain Underwriters at Lloyd's of London* (1995) 34 Cal.App.4th 554, 555 (*Amoco*) [holding that "section 1989 of the Code of Civil Procedure means what it says—a witness is not obliged to appear in court in California unless he is a resident of the state at the time of service].)

Seeking to avoid the plain language of Code of Civil Procedure section 1989, Pine Valley cites *Boal v. Price Waterhouse & Co*. (1985) 165 Cal.App.3d 806 (*Boal*) in support of its contention the notice was enforceable. We are unpersuaded. In *Boal*, the court enforced a subpoena duces tecum served on an out-of-state resident. Not only does *Boal* fail to mention Code of Civil Procedure section 1989, but as stated in *Amoco*, *Boa*l involved a subpoena duces tecum (not a notice to attend trial under Code of Civil Procedure section 1987). (*Amoco, supra*, 134 Cal.App.4th at p. 561.) *Boal* is inapplicable.

The trial court also acted within its discretion in declining to order the Ajinomoto subsidiaries to produce their financial records at trial. Just before the close of evidence, Pine Valley's counsel sought for the first time "two pieces of paper" – a balance sheet and a statement of income. To the extent Pine Valley chose not to follow its pretrial right to inquire about Ajinomoto's financial condition pursuant to Civil Code section 3295, subdivision (c), choosing instead to wait until the end of trial, it

did so at its own peril. As stated in *Amoco*: "Whatever merit there might be to that approach in other cases, it was an unfortunate choice in this one. As at least one practice guide has observed, the geographical limitations of section 1989, particularly as applied to section 1987, 'make it all the more important to take the depositions of nonresident parties and party-affiliated witnesses.'" (*Amoco, supra*, 134 Cal.App.4th at p. 562.)

For these reasons, we conclude that the court properly exercised its discretion in declining to compel the Ajinomoto subsidiaries to produce evidence of their financial condition at trial.

II. AJINOMOTO'S CROSS-APPEAL

A. Substantial Evidence Supports The Verdict

1. Standard of Review

We review the jury's verdict for substantial evidence. (*McRae v. Department of Corrections & Rehabilitation* (2006) 142 Cal.App.4th 377, 389.)

2. CUTSA

CUTSA defines a trade secret as any "information, including a formula, pattern, compilation, program, device, method, technique, or process that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." (§ 3426.1, subd. (d).)

The Ajinomoto subsidiaries contend Pine Valley failed to specify its alleged trade secret adequately because: (1) it never provided the complete recipes for the products and (2) it failed to show that it made efforts to maintain the secrecy of its alleged trade secrets. We disagree.

Pine Valley presented evidence of a list of the specific ingredients in its fried rice recipes, the respective percentage of total weight of each ingredient, and the quantity per serving of each ingredient. This evidence provides a sufficient basis upon which a jury may find a protectable trade secret. (*See Brescia v. Angelin* (2009) 172 Cal.App.4th 133, 151 (*Brescia*) [holding that the plaintiff sufficiently identified his trade secret in pudding recipe where plaintiff listed the 15 specific ingredients and their relative percentage of the total].)[5]

In addition, substantial evidence supports the jury's finding that Pine Valley took reasonable efforts to maintain the secrecy of its recipes. Pine Valley entered into a written nondisclosure agreement with Ajinomoto U.S.A in 2011 (which applied as of the date the receiving party first acquired confidential information disclosed by the disclosing party). Pine Valley's president testified he entered into a "handshake deal" with Ajinomoto U.S.A's predecessor that Pine Valley's recipes were not to be used for any purpose other than manufacturing Pine Valley's products

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[5] Ajinomoto argues under *Brescia*, Pine Valley was required to offer evidence describing each step in the mixing, testing, and "code marking" of the recipes. In *Brescia*, however, there were two alleged trade secrets: the pudding recipe and the "manufacturing process." (*Brescia, supra*, 172 Cal.App.4th at p. 151.) Evidence of the mixing, testing, and "code marking" was required for the "manufacturing process" trade secret – not the pudding formula. (*Ibid.*)

for sale to Trader Joe's.[6] He also testified that although he shared his recipes with co-packers other than Ajinomoto without a written confidentiality agreement, he had "handshake agreements" with each of them to preserve the confidentiality of the recipes.

The Ajinomoto subsidiaries do not "cite the evidence in the record supporting the judgment and explain why such evidence is insufficient as a matter of law" as is required of a party challenging the sufficiency of the evidence. (*Rayii v. Gatica* (2013) 218 Cal.App.4th 1402, 1408.) We conclude that substantial evidence supports the jury's finding that Ajinomoto misappropriated Pine Valley's trade secrets.[7]

3. Breach of Contract, Fraud, Misappropriation of Confidential Information, and Intentional Interference

The Ajinomoto subsidiaries contend the general verdict is not supported by sufficient evidence because Pine Valley's claims

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6 He testified, "[w]e all trusted each other . . . It was all done over a handshake. We just shook hands, and it was done."

7 On October 30, 2018, Pine Valley filed a motion for leave to file trade secrets under seal and to strike Respondents' appendix for failure to comply with California Rules of Court, Rule 8.46. We deny the motion. Pine Valley included the documents it now seeks to seal in its own appendix. Pine Valley's disclosure of trade secrets in public court files, however, without evidence that the secrets have become generally known, does not automatically destroy the secrecy of the trade secret. (*Religious Tech. Ctr. v. Netcom On-Line Commun. Servs., Inc.* (N.D. Cal. 1995) 923 F.Supp. 1231, 1256.)

for breach of contract, fraud, and misappropriation of confidential information are premised on a nondisclosure agreement ("NDA"), which they contend did not apply to recipes disclosed prior to the NDA's effective date. But the plain language of the NDA reveals just the opposite. The NDA states: "[T]he parties have entered into this Agreement effective as of the date first written above, provided, however, that this Agreement, no matter when signed, is effective as of the date a receiving party first acquired Confidential Information disclosed by the disclosing party, if the same occurred prior to the date first written above." Accordingly, the NDA applied to the fried rice recipes disclosed before the specified January 7, 2011 effective date. We conclude substantial evidence supports the general verdict.

The Ajinomoto subsidiaries' sole contention on appeal regarding Pine Valley's claim for intentional interference with economic advantage is that there is no "wrongful conduct" because all of Pine Valley's other claims lack merit. Because we conclude that the jury's verdict is supported by substantial evidence, we reject this argument as well.

B. Royalty Award

Section 3426.2, subdivision (b) states: "If the court determines that it would be unreasonable to prohibit future use [of another party's trade secret(s)], an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time the use could have been prohibited." In the proceedings below, Ajinomoto opposed Pine Valley's request for a permanent injunction, arguing that a reasonable royalty is the more appropriate remedy. The court agreed with Ajinomoto, stating "[c]onditioning future use upon payment of reasonable

royalty is a more efficient and reasonable solution under the circumstances."

Relying on *Robert L. Cloud & Assoc. v. Mikesell,* (1999) 69 Cal.App.4th 1141 (*Cloud*), the Ajinomoto subsidiaries now contend the royalty award constitutes an impermissible double recovery because the compensatory damages awarded already included future lost profits. Their reliance is misplaced, however. In *Cloud*, the court granted the plaintiff's request for an injunction pursuant to Civil Code section 3426.2 *and* awarded payment of a royalty pursuant to Civil Code section 3426.3. (*Id.* at p. 1150.) In contrast to *Cloud*, here, the court awarded payment of a reasonable royalty *in lieu* of an injunction, consistent with Civil Code section 3426.2.

Not only does the Civil Code expressly permit a royalty in lieu of an injunction (§ 3426.2, subd. (b)) *and* compensatory damages (§ 3426.3, subd. (a)), substantial evidence in the record establishes the royalty award in this case does not constitute a double recovery. Here, there is no reason to believe the the jury's damages award of $2.8 million included future lost profits from sales to retailers other than Trader Joe's. At trial, Pine Valley's damages expert opined that Pine Valley suffered between $2.6 and $4.2 million in lost profits from lost sales to Trader Joe's. The expert further testified he assumed Ajinomoto was selling to vendors other than Trader Joe's, but he did not have specific sales information for the other vendors, which "would have enabled [him] to enhance [his] projections." Accordingly, Ajinomoto has not and cannot demonstrate a double recovery.

We further reject the Ajinomoto subsidiaries' arguments the court erred in fashioning the royalty award because it is speculative, extends into perpetuity, and violates res judicata.

They argue the royalty award is speculative because Pine Valley presented no evidence the recipes used in products Ajinomoto sells to other retailers are derived from Pine Valley's recipes. The record is to the contrary. For example, on April 30, 2012, Ajinomoto USA's "Food Technologist-R&D" wrote to another employee that the recipes for the fried rice products that Ajinomoto USA sold to ShopRite were the same "breakdown" as "the Trader Joe's products." Similarly, on August 22, 2013, Ajinomoto USA's employee wrote to his team that "Smart and final [*sic*] will be selling a rice that is the same recipe as the old [Trader Joe's Chicken Fried Rice] and [Vegetable Fried Rice] . . ." In any event, by its terms the royalty applies only to sales of products that use or are derived from Pine Valley's trade secrets.

Contrary to Ajinomoto's contention, the royalty award does not extend into perpetuity; rather, it applies "for so long as Defendants sell fried rice products which use the Plaintiff's trade secrets, or products that are derived from Plaintiff's trade secrets, consistent with the evidence adduced at trial."

Lastly, Ajinomoto argues the royalty award violates res judicata because it allows the court to maintain jurisdiction over future actions against Ajinomoto. But, a court may maintain jurisdiction to enforce an injunction without violating the principles of res judicata. (*Balboa Island Village Inn, Inc. v. Lemen* (2007) 40 Cal.4th 1141, 1161.)

We conclude the trial court did not err in awarding a reasonable royalty.

C. Dismissal of the Cross-Complaint with Prejudice

Finally, Ajinomoto argues the trial court lacked power to "change" its dismissal of Ajinomoto N.A.'s breach of contract cross-complaint from "without prejudice" to "with prejudice." Contrary to Ajinomoto's contention, however, there is no "written order signed by the court" stating that the cross-complaint was ever dismissed without prejudice.

As noted above, after the court began trial on the cross-complaint, Ajinomoto's counsel advised the court that Ajinomoto N.A. "dismisse[d] the cross-complaint without prejudice." Pine Valley's counsel objected that Pine Valley did not consent to a dismissal without prejudice. The court responded: "Okay. The record is made. Duly noted." Ajinomoto ignores the reporter's transcript and relies solely on the January 28, 2016 minute order stating the cross-complaint was dismissed without prejudice. But the minute order was neither signed by the court nor stamped with the court's signature. In such circumstances, "where the clerk's and reporter's transcripts conflict, the latter controls when, under the circumstances, it is the more reliable." (*People v. Carter* (2003) 30 Cal.4th 1166, 1199.)

The court did not err in dismissing the cross-complaint with prejudice after the trial on the cross-complaint commenced. Indeed, it would have been error to dismiss it without prejudice, under the circumstances. (See Civ. Proc. Code, § 581, subd. (e) ["[a]fter the actual commencement of trial, the court *shall* dismiss the complaint . . . in its entirety . . . with prejudice, if the plaintiff requests a dismissal . . ."], italics added.]

DISPOSITION

The judgment is affirmed. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

CURREY, J.

WE CONCUR:

MANELLA, P. J.

WILLHITE, J.